HIGH COURT OF CHHATTISGARY, BILASPUR

Criminal Appeal No.1135/2001

APPELLANT	Lala Chhaura, s/o Deriha Yadav, aged about 48 years, r/o village Tanakhar, P.S. Katghora, presently residing at Katori Nagoi, P.S. Katghora, Distt. Korba (C.G).

Versus

RESPONDENT	State of Chhattisgarh through S.H.O., Police Station Katghora, Distt. Korba (C.G)

Appearance:
Shri N.K. Chhaterjee, counsel for the appellant.
Shri Akhil Mishra, Panel Lawyer for the State.

D.B.: **HON'BLE SHRI L.C. BHADOO, J. &**
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(14.12.2007)

Following judgment of the court was passed by
L.C. Bhadoo, J,

(1) The accused appellant has preferred this appeal questioning the legality and correctness of the judgment of conviction and order of sentence dated 28th of September, 2001 passed by learned Sessions Judge, Bilaspur, in Sessions Trial No.379/2000 whereby and whereunder the learned Sessions Judge after holding the accused appellant guilty for the commission of offence punishable u/s 302 I.P.C., sentenced him to undergo life imprisonment.

(2) The case of the prosecution, in brief, is that on 05.9.2000, the accused appellant along-with his wife Vimla Bai (since deceased) went to the forest to collect the fire-wood. They were seen together going towards forest by Chandramati Bai (P.W.1) and Budh Kunwar(P.W.3). When the deceased and accused were near the Medau hillock in the forest area, some altercation took place between the two and the accused appellant attacked his wife with an Axe, as a result of which, Vimla Bai succumbed to the injuries. The whole night the accused remained near the body of his wife. In the morning of 6.9.2000 he went to the house of one Tilsingh and

asked for food. Thereafter, he went to the Police Station Katghora on foot where he gave *Merg* intimation Ex.P.11, on the basis of which, the first information report Ex.P.10 was registered. After registering the crime, the Investigating Officer took up the investigation and the accused gave memorandum Ex.P.2 regarding the place where the dead body of his wife was lying. At the instance of the accused, the I.O., left for the scene of occurrence where he prepared inquest Ex.P.1 on the body of Vimla Bai. The weapon of offence i.e., Axe stained with blood was seized on being produced by the accused under Ex.P.3. The *Banian* of the accused was also seized under Ex.P.3. The blood stained soil, plain soil and broken pieces of glass bangles of the deceased were seized under Ex.P.4. The body of deceased was sent for post mortem examination to Community Health Center, Katghora under Ex.P.5 where Dr. H.D. Dahire (P.W.6) conducted the postmortem. He opined that cause of death was shock and hemorrhage due to head injury and chest injury. He prepared the postmortem Ex.P.5-A. The Axe was sent to the Doctor for its examination and his opinion under Ex.P.6. The Doctor gave his opinion Ex.P.6(A) and opined that the injuries found on the body of Vimla Bai could be caused by Axe in question. Site plan Ex.P.7 was prepared by Patwari. The clothes of the deceased and Visceras of the deceased were seized under Ex.P.8. The same were sent for examination to the Forensic Science Laboratory, Sagar, from where, the report Ex.P.15 was received. The Serologist report was also received.

(3) After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, Katghora, who in turn committed the case to the Sessions Judge, Bilaspur for trial. In order to establish the charge against the accused, the prosecution has examined 9 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C., in which he admitted that Vimla Bai was his wife and she died in the forest. He also admitted that Vimla Bai used to reside with him. He admitted that the inquest was prepared on the body of Vimla Bai. In reply to questions No.18 & 19, he admitted that he took the Police to the place where the body of Vimla Bai was lying and the rest of the things were denied by him. He stated that he is innocent and has false been falsely implicated in the crime.

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(4) The learned Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

(5) We have heard Mr. N. K. Chatterjee learned counsel for the appellant and Mr. Akhil Mishra, Panel Lawyer for the State.

(6) At the outset, Mr. Chatterjee has not disputed the homicidal death of Vimla Bai. Moreover, P.W.6 Dr. H.D. Dahire has stated that on 07.9.2000 he was working as Assistant Surgeon in the Community Health Center, Katghora and on that day, he conducted the postmortem on the body of Vimla Bai on the requisition of S.H.O., Police Station Katghora. He noticed number of bruises on the chest, abdomen, right thigh, knees, left leg and right leg. He has also stated that there was a lacerated wound in size of 2" x 1" on the right side of the head. Clotted blood was present. There was swelling on the left eye. He has further stated that on opening skull, he noticed that there was a fracture of frontal bone and clotted blood was present, brain was pale, left side ribs 1 to 9 were fractured, right side ribs 3 to 8 were fractured. Both the lungs were pale. The blood was present in the chamber of the heart. All the injuries were inflicted by hard and blunt object and were antermortem in nature. The cause of death was hemorrhage due to injuries on head and chest. He has further stated that the Axe in question was sent to him in a sealed packet for examination and his opinion. He saw that there were blood stains on the Axe and the injuries found on the body of deceased could be caused by the said weapon. He advised for chemical examination of the Axe. His report is Ex.P.6-A. In view of the above evidence of the Doctor, which has not been demolished by cross-examination, it establishes the fact that the death of Vimla Bai was homicidal in nature.

(7) As far as the complicity of the accused in the crime in question is concerned, Mr. Chatterjee, learned counsel for the appellant argued that the whole case rests on the circumstantial evidence and there is no legal, clinching evidence on record to complete the chain of circumstances in order to establish the charge against the accused. He also argued that the weapon of offence i.e., Axe was not produced before the Court in order to give opportunity to the defence counsel to cross-examine the Doctor with regard to the nature of injuries. He also argued that there is

no evidence that the axe was sealed on the spot and the same remained in sealed condition till it was received by the Forensic Science Laboratory and the Doctor, therefore, on the basis of recovery of the Axe, the accused cannot be connected with the crime in question.

(8) On the other hand, Mr. Akhil Mishra, P.L. supported the judgment of the trial Court.

(9) Having heard counsel for the parties, we have perused the judgment and the record of the trial Court. Admittedly, in this case, there is no ocular or direct evidence to establish the charge against the accused. The whole case rests on the circumstantial evidence.

(10) In order to record the conviction of an accused based on the circumstantial evidence, as per the settled law, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter of ***Dhananjoy Chatterjee – vs- State of West Bengal (1994) 2 SCC 222,*** which is quoted below:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the Court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

(11) In the present case, the prosecution has tried to establish the charge against the accused based upon the following circumstances:

(i) that Vimla Bai was seen alive just before her death with the accused when they were going together to the forest area where the dead body of Vimla Bai was found.

(ii) The accused gave memorandum Ex.P.2 regarding place where he committed the crime and the body of the Vimla was lying.

(iii) That the blood stained weapon of offence i.e., Axe was seized from the possession of the accused.

(12) First Circumstance:

As far as the first circumstance is concerned, P.W.1 Chandramati has stated that the accused is known to her as he is resident of her village. Vimla Bai was his wife and she was known to her. Body of Vimla was found in the forest. On Tuesday when she was returning after collecting the wood from forest, she saw the accused Lal Chhahura and Vimla Bai going together towards forest and at that time, accused was carrying Axe in his hand. On Wednesday, the police took the accused towards forest area. In her cross examination, she has stated that when she was returning from the forest Ramayan Bai was with her and she was also carrying Axe. They were in forest for about one hour. At that time they were cutting wood and when they were returning, they saw the accused and Vimla Bai were going together towards forest. That was at about 12.00 noon. There is no further cross examination and in the cross examination, the defence has not been able to elicit any circumstance which may discredit the evidence of this witness regarding the last seen.

(13) As per the settled law, in order to connect the accused with crime based on last seen theory, the prosecution is required to establish that the time gap between the time when the deceased was seen alive with the accused and when the dead body was found must be short and there must be proximity between the last seen and the death. There should not be any possibility of coming any third person in between the accused and deceased to commit the crime. Based on the evidence available on the record, it is established that on Tuesday at about 12 noon, the accused and deceased were seen together when they were going to forest area and on Wednesday morning the dead body was found in the forest area. Moreover, that dead body and the place where the body was lying were pointed by none else than the accused himself in pursuance of the memorandum Ex.P.2 given by him and the accused himself appeared before the Police and lodged the F.I.R.

Ex.P.10 and gave merg intimation Ex.P.11. Even if most of the part is not admissible in evidence but the fact remains that at the same time when he lodged the report Ex.10 and P-11, he gave memorandum Ex.P.2 regarding place where he committed the crime and he pointed that place where the dead body of Vimla Bai was found. In the cross examination of the I.O., A.R. Qureshi (P.W.9) or Chandramati (P.W.1), the defence has not been able to elicit any circumstance which suggests that there was any possibility of coming any third person between the time when the dead body was seen and the accused and deceased were seen going together towards forest area. Therefore, the prosecution has been able to establish with clinching legal evidence that deceased Vimla Bai was seen alive when she was going together with accused towards forest area. There is proximity between the death of Vimla & Vimla and accused were last seen together when Vimla was alive.

(14) Second Circumstance:

As far as this point is concerned, P.W.5 Liyakat Ali has stated that the Panchnama on the body of Vimlabai was prepared in his presence and there were injuries on her body. The inquest Ex.P.1 was prepared which bears his signature at "A" to "A" place. He has also stated that the accused produced the Axe before the Police in his presence. He has further stated that he can show the place in the forest where the dead body of Vimla was lying and thereafter he took them to the forest area and pointed the body of Vimla Bai. Immediately memorandum Ex.P.2 was reduced into writing which bears his signature at portion "A to A" and thereafter, the inquest Ex. P-1 was prepared. The police seized the Axe stained with blood, one Banian of the accused was also seized and Memorandum Ex.P.3 was prepared. In the cross examination, he has stated that he saw the accused on that day for the first time. He has further stated that it is incorrect to say that the police gave beating to the accused. He has further stated that it is not correct to say that the seizure memo was prepared in the police station and he stated that the Axe was seized at the place of occurrence. The accused was also keeping Axe when he took the police to the forest area.

(15) P.W.9 A.R. Quereshi, the I.O., has stated that after giving F.I.R., and merg intimation Ex.P-10 & P-11 on 6.9.2000 the

accused gave memorandum Ex.P.2 stating that the body of Vimla Bai was lying in the forest near a tree and he can show the place where the body is lying, based on that Memorandum Ex.P.2 reduced into writing which bears his signature at place "B to B" and at the instance of the accused, in the presence of Liyakat Ali and Laxminarayan, the body was found from where blood stained soil, plain soil and broken pieces of glass bangles were seized under Ex.P.4. The Axe was seized under Ex.P.3. The same was stained with blood. He also seized a Sando Banian of the accused stained with blood.

(15) A perusal of the seizure memo Ex.P.3 reveals that just after the seizure of the Axe, the same was sealed, even the Sando Banian which was seized from the body of accused was also sealed. P.W.6 Dr. H. D. Dahire has stated that on 27.9.2000, the Axe was received in sealed condition and after examination of the Axe, again the axe was sealed. He advised for chemical examination by Forensic Science Laboratory. A perusal of the report Ex.P.15 of the F.S.L., shows that the samples were received in sealed condition and on this aspect, neither Dr.P.W.6 H.D. Dahire nor the Investigating Officer A.R. Qureshi (P.W.9) have been cross examined by the defence counsel regarding the sealing position of the Axe when it was received by Dr.H.D. Dahire and when it was received by the F.S.L. It is true that it is the duty of the prosecution as also the Presiding Officer of the Court that while recording the evidence to ensure that the weapon of offence is produced in the Court because in serious offences, the production of weapon of offence is always of great importance in order to give opportunity to the accused to cross-examine on the aspect of the injuries as to whether those injuries can be inflicted by the weapon, or to cross-examine the medical jurisprudence on the aspect that whether those injuries can be inflicted by the said weapon. It is also necessary for the Court and the prosecution to ensure that the concerned investigating officer and the witnesses of seizure must state about the condition of weapon of offence whether it was sealed or not? All these aspects are very important in the criminal jurisprudence but equally it is the duty of the defence also that as and when they want to cross-examine the prosecution witnesses on the aspect of sealing of the articles at the time of seizure as also on the aspect whether the injuries can be

caused by the weapon. If they remain silent then, if such questions are raised at the appeal stage, it becomes difficult to give finding on these aspects and the defence counsel is not within his right to raise question regarding prejudice to the accused on account of non production of the articles in the court as at the first opportunity, he should have raised this objection. The defence counsel is also supposed to stand before the Court in order to assist the Court in all respects for arriving at a just decision in the matter. As has been mentioned earlier, the seizure memo itself speaks that the axe was sealed. The Doctor has stated that he received the Axe in sealed condition for examination, thereafter after sealing he returned the same for getting it examined by the F.S.L and Ex.P.15 also shows that the Axe was received by the F.S.L. in sealed condition. Therefore, we do not find any substance in the arguments of Mr.Chatterjee that the Axe was not sealed.

(16) From the above discussion, it is established that the place of occurrence where the body of Vimla Bai was lying was pointed by the accused and even the weapon of offence i.e., Axe was produced by him, as per the seizure memo same was stained with blood, as per the Doctor's evidence, the same was stained with blood, as per the F.S.L. report, the blood was found on the Banian of the accused and as per the serologist report, the human blood was found on the Baniyan.

(17) For the foregoing discussion, the prosecution has been able to establish that the deceased Vimla Bai was seen alive with the accused while going to the forest where the dead body was found just before her death. The place where the body was found was pointed by the accused. The weapon of offence i.e. Axe was seized from the accused and the Doctor has opined that the injuries found on the body of Vimla Bai could be caused by said Axe. The Sando Banian of the accused which was seized under Ex.P.3 was found stained with human blood, therefore, from the above circumstantial evidence the complicity of the accused in crime in question is established, all these circumstances point towards the involvement of the accused in crime in question and there is no possibility of coming any other person in between when the accused and deceased were seen together & when the crime was committed. Looking to the manner in which the accused attacked

the deceased with the Axe, her frontal bone was fractured, left side ribs 1 to 9 were fractured, right side ribs 3 to 8 were also fractured, as a result of which, there was a spontaneous death and accused attacked her with deadly weapon i.e. Axe, the accused has rightly been convicted u/s 302 I.P.C.

(18) We do not find any merit in this appeal and the same is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge